

(Spl.-H.C.A.S.C.D., 78-e)

FARAD CONTINUATION SHEET NO.

**IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI, GOA.
APPELLATE SIDE**

DISTRICT :

WRIT PETITION NO. 449 OF 2004.

Office Notes, Office Memoranda of Quorum, appearances, Court's orders of directions and Registrar's orders		Court's or Judge's orders
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Mr. S. D. Lotlikar, Senior Advocate
with Ms. Kamaxi Sambari,
Advocate for the petitioner.

Mr. M. S. Sonak, Advocate for the
respondent.

CORAM : B. H. MARLAPALLE, J.

DATE : 25th NOVEMBER, 2004.

P.C. :

1. Heard Ms. Kamaxi Sambari,
Learned Advocate for the
petitioner and Mr. Sonak, Learned
Advocate for the respondent.

2. This Petition filed under

Article 227 of the Constitution takes exception to the order passed by the Learned Civil Judge, Senior Division on the application filed under Special Execution No. 4/2000 moved by the decree holder. Arrest and detention of the present petitioner was sought on account of failure to comply with the order passed by the court.

3. The plea taken by the petitioner before the trial Court by filing affidavit was his inability to pay the money/decretal amount. The decree holder examined two witnesses i.e. P.W.1 – Joaquim Mascarenhas and P.W.2 – Govind Mahadev Naik. Both of them gave the details regarding the income of the petitioner and the financial status so as to obey the decree.

Once this burden was discharged by the decree holder by placing evidence regarding the financial status of the respondent, the onus shifted on him to place on record reliable evidence that he had no financial means to obey the decree. The petitioner did not in any manner place such evidence, beyond merely saying that he had no means to pay the money. The reasons given by the trial Court in support of the impugned order, do not call for interference.

4. Hence the Petition fails and the same is rejected summarily. Ad-interim order stays vacated.

B. H. MARLAPALLE, J.

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